

## Introduced by Senator Kehoe

February 22, 2005

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An act to amend Section 13269 of the Water Code, relating to water.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1070, as introduced, Kehoe. Water quality: waivers.

Existing law, the Porter-Cologne Water Quality Control Act, provides that a state board or a regional board may waive certain waste discharge requirements for specific discharges or specific types of discharges if the waiver is consistent with any applicable state or regional water quality control and is in the public interest.

This bill, in addition, would require that a waiver does not pose a significant threat to the beneficial uses of the waters of the state.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13269 of the Water Code is amended to  
2 read:  
3 13269. (a) (1) On and after January 1, 2000, the provisions  
4 of subdivisions (a) and (c) of Section 13260, subdivision (a) of  
5 Section 13263, or subdivision (a) of Section 13264 may be  
6 waived by the state board or a regional board as to a specific  
7 discharge or type of discharge if the state board or a regional  
8 board determines, after any necessary state board or regional  
9 board meeting, that the waiver is consistent with any applicable  
10 state or regional water quality control plan, *does not pose a*  
11 *significant threat to the beneficial uses of the waters of the state,*

1 and is in the public interest. The state board or a regional board  
2 shall give notice of any necessary meeting by publication  
3 pursuant to Section 11125 of the Government Code.

4 (2) A waiver may not exceed five years in duration, but may  
5 be renewed by the state board or a regional board. The waiver  
6 shall be conditional and may be terminated at any time by the  
7 state board or a regional board. The conditions of the waiver  
8 shall include, but need not be limited to, the performance of  
9 individual, group, or watershed-based monitoring, except as  
10 provided in paragraph (3). Monitoring requirements shall be  
11 designed to support the development and implementation of the  
12 waiver program, including, but not limited to, verifying the  
13 adequacy and effectiveness of the waiver's conditions. In  
14 establishing monitoring requirements, the regional board may  
15 consider the volume, duration, frequency, and constituents of the  
16 discharge; the extent and type of existing monitoring activities,  
17 including, but not limited to, existing watershed-based,  
18 compliance, and effectiveness monitoring efforts; the size of the  
19 project area; and other relevant factors. Monitoring results shall  
20 be made available to the public.

21 (3) The state board or a regional board may waive the  
22 monitoring requirements described in this subdivision for  
23 discharges that it determines do not pose a significant threat to  
24 water quality.

25 (4) (A) The state board or a regional board may include as a  
26 condition of a waiver the payment of an annual fee established by  
27 the state board in accordance with subdivision (f) of Section  
28 13260.

29 (B) Funds generated by the payment of the fee shall be  
30 deposited in the Waste Discharge Permit Fund for expenditure,  
31 upon appropriation by the Legislature, by the state board or  
32 appropriate regional board for the purpose of carrying out  
33 activities limited to those necessary to establish and implement  
34 the waiver program pursuant to this section. The total amount of  
35 annual fees collected pursuant to this section shall not exceed the  
36 costs of those activities necessary to establish and implement  
37 waivers of waste discharge requirements pursuant to this section.

38 (C) In establishing the amount of a fee that may be imposed on  
39 irrigated agriculture operations pursuant to this section, the state

board shall consider relevant factors, including, but not limited to, all of the following:

- (i) The size of the operations.
- (ii) Any compliance costs borne by the operations pursuant to state and federal water quality regulations.
- (iii) Any costs associated with water quality monitoring performed or funded by the operations.
- (iv) Participation in a watershed management program approved by the applicable regional board.

(D) In establishing the amount of a fee that may be imposed on silviculture operations pursuant to this section, the state board shall consider relevant factors, including, but not limited to, all of the following:

- (i) The size of the operations.
- (ii) Any compliance costs borne by the operations pursuant to state and federal water quality regulations.
- (iii) Any costs associated with water quality monitoring performed or funded by the operations.
- (iv) The average annual number of timber harvest plans proposed by the operations.

(5) The state board or a regional board shall give notice of the adoption of a waiver by publication within the affected county or counties as set forth in Section 6061 of the Government Code.

(b) (1) A waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments.

(2) Notwithstanding paragraph (1), a waiver for an onsite sewage treatment system that is in effect on January 1, 2002, shall remain valid until June 30, 2004, unless the regional board terminates the waiver prior to that date. Any waiver for onsite sewage treatment systems adopted or renewed after June 30, 2004, shall be consistent with the applicable regulations or standards for onsite sewage treatment systems adopted or retained in accordance with Section 13291.

(c) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (d), the provisions of subdivisions (a) and (c) of

1 Section 13260, subdivision (a) of Section 13263, and subdivision  
2 (a) of Section 13264 do not apply to a discharge resulting from  
3 any of the following emergency activities:

4 (1) Immediate emergency work necessary to protect life or  
5 property or immediate emergency repairs to public service  
6 facilities necessary to maintain service as a result of a disaster in  
7 a disaster-stricken area in which a state of emergency has been  
8 proclaimed by the Governor pursuant to Chapter 7 (commencing  
9 with Section 8550) of Division 1 of Title 2 of the Government  
10 Code.

11 (2) Emergency projects undertaken, carried out, or approved  
12 by a public agency to maintain, repair, or restore an existing  
13 highway, as defined in Section 360 of the Vehicle Code, except  
14 for a highway designated as an official state scenic highway  
15 pursuant to Section 262 of the Streets and Highways Code,  
16 within the existing right-of-way of the highway, damaged as a  
17 result of fire, flood, storm, earthquake, land subsidence, gradual  
18 earth movement, or landslide within one year of the damage.  
19 This paragraph does not exempt from this section any project  
20 undertaken, carried out, or approved by a public agency to  
21 expand or widen a highway damaged by fire, flood, storm,  
22 earthquake, land subsidence, gradual earth movement, or  
23 landslide.

24 (d) Subdivision (c) is not a limitation of the authority of a  
25 regional board under subdivision (a) to determine that any  
26 provision of this division shall not be waived or to establish  
27 conditions of a waiver. Subdivision (c) shall not apply to the  
28 extent that it is inconsistent with any waiver or other order or  
29 prohibition issued under this division.

30 (e) The regional boards and the state board shall require  
31 compliance with the conditions pursuant to which waivers are  
32 granted under this section.

33 (f) Prior to renewing any waiver for a specific type of  
34 discharge established under this section, the state board or a  
35 regional board shall review the terms of the waiver policy at a  
36 public hearing. At the hearing, the state board or a regional board  
37 shall determine whether the discharge for which the waiver  
38 policy was established should be subject to general or individual  
39 waste discharge requirements.

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